Sick Leave Banks

Voluntary sick leave banks provide employees an opportunity to pool sick leave days together to protect each other from financial loss due to a serious illness, accident, or injury. When an eligible employee must be absent from work for an extended time, the employee may receive paid leave benefits from the sick leave bank to minimize loss of salary and benefits.

Negotiation over the provisions of the sick leave banks provides clarity for both employers and employees. The terms governing the use of sick leave are a mandatory subject of bargaining and should be included in the contract, not policy.

**Guidance**

1. **Negotiate contract language that clearly defines eligibility requirements, how eligible educators participate, and how the sick leave bank will be governed.**
2. **Establish application procedures, donation procedures, and guidelines regarding balance and replenishment of the bank when needed.**

## Tax Implications

The IRS has opined that as long as a sick leave bank is limited to covering medical emergencies, donated days are only taxable to the recipients (just as their wages would be). A “medical emergency” was defined as a major illness or other medical condition that requires a prolonged absence from work, including intermittent absences that are related to the same illness or condition. (Some plans use “catastrophic accident, illness or serious recurring illness necessitating an extended absence,” which would also be appropriate.)

Limiting sick leave bank eligibility to those who are experiencing a “medical emergency” protects donors from being taxed on their gifts. In some situations, however, donors may be happy to pay the taxes on their gifts if it is necessary to help a colleague.

## Sick Leave Bank Implementation

The most important aspect of the sick leave bank operation is clarity on specific implementation provisions:

* Must an individual donate sick days in order to use the sick leave bank?
* What is the procedure to notify new employees about contribution requirements to use the sick leave bank if these requirements exist?
* Is this a “bank” of days that accumulate over time or may employees donate leave on a case-by-case basis?
* Which absences are covered? (See above for a discussion on the use of “medical emergencies” and be sure you do not discriminate by excluding certain categories of medical conditions.)
* Who administers the sick leave bank?
  + In some districts, the employer or a third-party administrator may make all determinations regarding eligibility. This cedes control from the employees who are the actual sick leave donors.
  + In other districts, employees may make the determinations regarding eligibility. This is only advisable as long as there are very explicit guidelines for maintaining what conditions may make an employee eligible to access the sick leave bank and explicit training on the privacy of the information obtained in the request.
  + The most successful sick leave banks have representatives from both the labor and management, or a method to appeal an initial decision.
* How many days can a participant use? We recommend that the maximum is tied to the onset of another benefit, such as long-term disability or pension disability benefits.
* Are decisions appealable or grievable?
* Who can the days be used to care for? Keep in mind that under Minnesota statutes, personal sick leave can now be used for an extensive list of family members up to a maximum of 160 hours. Sick leave requests to care for members of the family could also be made to a sick leave bank. This should be a consideration when it comes to establishing the rules.

## Bargaining advice

In addition to the establishment of clear criteria:

1. **Do not agree to language that requires you to “indemnify” the school district**. This language means that you will have to compensate the district if anyone successfully sues it based on administration of the sick leave bank. This could result in significant and unnecessary expense to the local in the event that there is a dispute about the administration of the sick leave bank.
2. When making the determination of whether someone is eligible to use banked days, **apply the standards required by the bank**. Eligibility for use of banked days should not be determined on a case-by-case basis without a uniform process of measuring the circumstances at hand against the established criteria in the collective bargaining agreement. This avoids potential liability for discrimination.

## Sample language

Please note that the following language sample MAY NOT WORK for all locals and should be amended to fit the needs of members in each local, especially around qualification and membership. The example below is for a traditional bank, but locals can also institute programs where person-to-person donations are requested. This method avoids many administrative and potential liability issues.

1. **Purpose**: The purpose of the Sick Leave Bank is to provide additional sick leave to those members of the bargaining unit who have exhausted their sick leave and have a “medical emergency,” defined as “a medical condition of the employee or family member of the employee that will require the prolonged absence of the employee from duty and will result in a substantial loss of income to the employee because the employee will have exhausted all paid leave otherwise available.”
2. **Qualifications**: To qualify for leave under the Sick Leave Bank:
3. Employees must be contributing members of the Sick Leave Bank.
4. Employees must have exhausted their personal leave accrual.
5. Employees must provide written verification by an attending physician and submit a written application requesting sick leave days.
6. Leave to care for relatives and children with a medical emergency will follow the eligibility and limitations of Minnesota Statutes Chapter 181.
7. Employees who are collecting benefits from long-term disability or workers compensation will not be eligible to access the Sick Leave Bank. Upon a determination of eligibility for TRA/PERA disability benefits, Sick Leave Pool benefits will cease. A teacher initially denied LTD or workers compensation who ultimately collects benefits will be responsible to cooperate in the repayment of the sick leave bank to the extent permissible.
8. Employees who are working less than full-time shall be eligible for benefits only for the pro-rata portion of the school day for which they are employed.
9. **Membership:** Participation in the Sick Leave Bank will be determined as follows:
10. In order to establish the Sick Leave Bank, each employee who wants to join will donate one (1) sick leave day.
11. At the time of hire, Employees shall donate one (1) sick leave day unless the employee submits an election form opting out of membership in the Sick Leave Bank.
12. At such time as the Sick Leave Bank balance dips below \_\_\_\_ days, all members will contribute one (1) day each. Employees who opt out of this contribution will no longer be members of the Sick Leave Bank and will lose eligibility for its benefits. Employees may rejoin the Sick Leave Bank when they make the next requested contribution.
13. **Administration:** The Sick Leave Bank will be administered in the following way:
14. An employee must apply for benefits under the Sick Leave Bank by completing the necessary application form.
15. The application will be submitted to the human resources department for processing.
16. In the event an application is denied, the employee may appeal such denial to a committee made up of two members representing the bargaining unit members and one member representing the School District.
17. **Accounting:** The District shall provide an accounting of the status and use of the Sick Leave Bank at the end of each contract year.
18. **Donated Days Irretrievable:** All days donated to the Sick Leave pool shall be irretrievable by the donor except as provided herein.
19. **Severability:** In the event the Sick Leave Bank is dissolved, all days shall be returned to those participating in the Bank. All members will receive an equal number of days, except that in no case will anyone receive more days than they contributed to the Bank.
20. **Maximum Benefit:** The maximum Sick Leave Pool benefit shall be \_\_\_\_\_\_.